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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re M.C. et al., a Person Coming Under
the Juvenile Court Law.

H041999
(Santa Cruz County
Super. Ct. Nos. DP002700, DP002701)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

C.M.,

Defendant and Appellant.

C.M. (mother), the mother of M.C. and N.C.-M. (the children), appeals from the February 23, 2015 orders following the Welfare and Institutions Code section 366.26¹ hearings in the children's dependency cases. Mother asserts that the juvenile court erred when it found that the beneficial parent-child relationship exception did not apply. We find no error and affirm.

I

Procedural History

On November 21, 2012, the Santa Cruz County Human Services Department (Department) filed juvenile dependency petitions on behalf of M.C., then three years old,

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and N.C.-M., then seven years old.² On January 24, 2013, the juvenile court found that M.C. and N.C.-M. were children described by section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling).

On February 4, 2013, the juvenile court declared M.C. and N.C.-M. to be dependent children of the court. It ordered family reunification services for both parents.

Father failed to appear at the 12-month review hearings held on March 10, 2014 in the children's dependency cases. The juvenile court terminated reunifications services to father. It ordered family reunification services to continue for mother.

The status review report, dated May 22, 2014, for the 18-month status review hearing in both cases indicated that "[t]he main risk issues regarding this family are parental substance abuse and domestic violence." Although "mother ha[d] reported that the father is a trigger for possible future relapse," mother "was still willingly having in-person contact with [father]" and she "was not forthcoming about her continued contact with" him. The report stated: "[Mother] has been in an on and off relationship with [father] since junior high school. There have been restraining orders and protective orders in place many times in the past. While [mother] is stating at this time that she is having no contact with [father], the Department wonders if that indeed is an honest and accurate representation of the facts." The Department recommended termination of family reunification services to mother.

As to visitation, the May 22, 2014 status review report stated: "[M]other . . . has been visiting with her children on a daily basis. During visitation, [mother] plays with the children, gives them a bath, helps them clean their room, and she helps [N.C.-M.] with her homework. The Department recently authorized [mother] two to three hours unsupervised time with both minors"

² We take judicial notice of the records in cases (*C.M. v. Super. Ct.* (Oct. 17, 2014, H041420 [notice of intent to petition for writ]; *In re M.C. et al.*; *Santa Cruz County HSD v. C.M.* (Sept. 27, 2015, H041868) [nonpub. opn.]) (Evid. Code, §§ 452, subd. (d), 459.)

At the 18-month status review hearing in both cases, ultimately held on September 5, 2014, the juvenile court terminated family reunification services for mother. It reduced visitation for mother to a minimum of once a month. The court set both matters for a section 366.26 hearing on December 16, 2014.

In the report prepared for the section 366.26 hearing in both cases, dated December 16, 2014, the Department recommended that parental rights as to the children be terminated. According to the report, father was then “incarcerated with criminal charges pending disposition.” The report stated: “[Mother] received 18 months of family reunification services, and her services were terminated on 09/05/2014. [Mother] has continued visiting with her children and the visits are appropriate. The children do have a loving visiting relationship with their mother. Unfortunately [mother] was not able [to] prove that she could abstain from having a relationship with the minors’ father, a relationship which placed her and the children in physical and emotional danger. [The children’s] need for permanency, emotional stability, consistency, security, and sense of belonging that their prospective adoptive parents can provide, greatly outweighs any possible parent/child relationship with [mother] and [father].” In the social worker’s opinion, the termination of parental rights would not be detrimental for the children.

In its February 23, 2015 memo to the court, the Department again recommended that the juvenile court terminate parental rights as to M.C. and N.C.-M. at the section 366.26 hearing. The children had been removed in November of 2012 and, at the time of the memo, they had been dependents of the court for approximately two years and three months.

In the memo, the Department reported that it had information that mother had falsified reports of abuse by father and had falsely testified under oath concerning father’s alleged kidnapping, rape, and stabbing of her. The memo indicated that, although “[t]he primary concern that brought this family to the attention of the Court was severe domestic violence between [mother and father],” mother “chose on her own volition to continue to have a relationship with [father].” It stated: “[Mother] openly

admitted to having lied to law enforcement and the criminal court about the actual nature of the interaction between her and [father]. According to court records, [mother] stated that she lied because revealing the truth would have damaged her case with the Department (CPS)” It further stated: “As a result of [mother’s] false accusations, the children had to experience their father being arrested and incarcerated as an accused rapist. In addition, the mother’s claims put the father at risk of being wrongfully incarcerated for life.” In the social worker’s opinion, mother’s “behaviors have demonstrated untrustworthiness, even to the point that it further compromises the emotional stability of her children.”

The Department’s memo also indicated that another situation had raised doubts as to mother’s trustworthiness. It stated that “the criminal court transcript indicates that [mother’s] preliminary examination was [held] on 11/03/2014 starting at 10:00 a.m.” “at the Santa Cruz Court House in Santa Cruz, CA.” Yet mother’s section 388 petitions were supported by proof of attendance showing that she attended AA meetings at the Watsonville Fellowship on that same date at noon. In the social worker’s opinion, it was “very unlikely that [mother] would be able to testify in Santa Cruz and be present for an AA meeting at noon in Watsonville, CA.”

The Department’s memo stated that mother “continues to show discrepancies in her ability and willingness to change her unsafe behaviors.” It observed that, in May of 2014, “mother was having unsupervised visits and by July of 2014, a meeting was scheduled to consider an extended visit (i.e., a trial return of the children to their mother).” It was discovered that mother was having undisclosed contact with the father and she had “made serious false allegations against the father” As a result, “mother’s visitation with the children was dramatically reduced” and that “transition was particularly difficult for [the children].”

At the hearing on February 23, 2015, the social worker, who became responsible for the children’s cases after the termination of reunification services, testified that, in her opinion, “the emotional stability that comes with adoption benefits the children more than

having a connection with their mother.” Mother’s exhibits, including visitation logs, were admitted into evidence. The children’s maternal great-grandmother and mother testified on mother’s behalf. Father also testified.

The February 23, 2015 minute order stated that the juvenile court had read and considered the social worker’s report and admitted into evidence the section 366.26 report, dated December 16, 2014, and the Department’s memo to the court, dated February 23, 2015. The court found the children to be adoptable. It rejected mother’s assertion of the beneficial parent-child relationship exception to adoption. The court terminated the parental rights of mother and father as to the children. It made adoption the permanent plan for the children. That same day mother filed notices of appeal from those orders.

II

Discussion

Mother maintains that the juvenile court erred when it found the beneficial parent-child relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) did not apply. We find no error.

At a section 366.26 hearing, a juvenile court has limited choices. Once the court determines under a clear and convincing evidence standard that it is likely that the child will be adopted, the court is required to terminate parental rights and order the dependent child placed for adoption unless a statutory exception applies. (§ 366.26, subd. (c)(1).) “The Legislature has thus determined that, where possible, adoption is the first choice.” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

“The specified statutory circumstances—actually, *exceptions* to the general rule that the court must choose adoption where possible—‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’

[Citation.] . . . The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*In re Celine R., supra*, 31 Cal.4th at p. 53.)

Section 366.26, subdivision (c)(1)(B), contains a number of exceptions to adoption, including the beneficial parent-child relationship exception (§ 366.26, subd. (c)(1)(B)(i)). That exception applies where “[t]he court finds a compelling reason for determining that termination would be detrimental to the child [because] [t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Ibid.*)

A parent bears the burden of proving the beneficial parent-child relationship exception applies. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 207.) The parent-child relationship must promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Ibid.*) “[T]he exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

On appeal from a court order terminating parental rights following the court’s determination the beneficial parent-child relationship exception does not apply, we review the juvenile court’s findings of fact under a substantial evidence standard and its discretionary decision regarding the existence of a compelling reason under an abuse of discretion standard. (See *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315; see *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622; *In re C.B.* (2010) 190 Cal.App.4th 102, 123; but see *In re G.B.* (2014) 227 Cal.App.4th 1147, 1166 & fn. 7.) “Since the proponent of the exception bears the burden of producing evidence of the existence of a

beneficial parental . . . relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court's determination." (*In re Bailey J.*, *supra*, at p. 1314.)

In contrast, a juvenile court's determination whether there is a compelling reason not to terminate parental rights based on a beneficial parent-child relationship is "a 'quintessentially' discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951.) Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies." (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315; see *In re C.B.*, *supra*, 190 Cal.App.4th at p. 123.)

“ ‘ [“]The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” ’ [Citation.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) “The abuse-of-discretion standard requires us to uphold a ruling which a reasonable judge might have made, even though we would not have ruled the same and a contrary ruling would also be sustainable. We cannot substitute our own judgment. [Citations.]” (*People v. Woods* (1993) 12 Cal.App.4th 1139, 1153.)

Otherwise stated, “[w]hen applying the differential abuse of discretion standard, ‘the trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.’ (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712, fns. omitted; see *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)” (*In re C.B.*, *supra*, 190 Cal.App.4th 102, 123.)

Assuming the juvenile court found that factual predicates for applying the beneficial parent-child relationship existed, mother fails to show that the court abused its

discretion in determining that her relationship with each child did not promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) In evaluating whether the beneficial parent-child relationship exception applied, the court did not base its discretion, as mother claims, on her failure to reunify with her children. The court merely observed that mother had chosen her relationship with father to her children’s detriment and lied to cover up her inappropriate conduct with him. The court acknowledged, however, that she was a “great visiting mother.” The court ultimately made clear that it could *not* find that the mother-child relationship was so good that it would be in each child’s best interest to have that legal relationship continue rather than proceed with adoption. Although the court recognized there might be trauma as the result of adoption, it determined that adoption would not ultimately be detrimental to the children and “the long-term plan of adoption for [the] children [was] overwhelmingly in their benefit.”

As mother acknowledges, the social worker expressed the opinion that termination of parental rights would not be detrimental to the children and mother did *not* present any expert evidence that termination of parental rights would be detrimental to the children. The record does not disclose that the court applied an incorrect standard in deciding whether the beneficial parent-child relationship exception was established. Mother fails to show that the juvenile court acted arbitrarily and beyond the bounds of reason in finding that exception was inapplicable.

DISPOSITION

The February 23, 2015 orders are affirmed.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

WALSH, J.*

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* Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.